



COMMONWEALTH OF MASSACHUSETTS

CONSUMERS' COUNCIL

INTERIM REPORT

GOVERNMENT DOCUMENTS
COLLECTION

CATV STUDY

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University of Massachusetts Resolves of 1967 - Chapter 75
Depository Copy

Dr. Edward R. Willett
Chairman

Dermot P. Shea
Executive Secretary

Publication of this document approved by Alfred C. Holland,
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AUTHORITY FOR STUDY

RESOLVES OF 1967

Chap. 75. RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY THE CONSUMERS' COUNCIL RELATIVE TO THE MAINTENANCE OF CENTRALLY LOCATED TELEVISION ANTENNAE PROVIDING SERVICE TO HOMEOWNERS BY CABLE.

Resolved, That the consumers' council is hereby authorized and directed to make an investigation and study of the problems relating to the establishment of centrally located television antennae providing individual reception to homeowners by cable, laws relative to the public regulation of the maintenance thereof and rates to be charged therefor, and concerning the selection of channels to be carried over such antennae. Said council shall report the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives on or before the fourth Wednesday of January, nineteen hundred and sixty-eight.

Approved June 26, 1967.



The Commonwealth of Massachusetts Consumers' Council

State Office Building, Government Center
100 Cambridge Street, Boston 02202

DR. EDWARD R. WILLETT
CHAIRMAN

DERMOT P. SHEA
EXECUTIVE SECRETARY

January 24, 1968

Hon. William C. Maiers
Office of Clerk
House of Representatives
State House
Boston, Massachusetts

Dear Mr. Maiers:

In accordance with provisions of Chapter 75 of the Resolves of 1967, the Consumers' Council hereby files an interim report with the request for an extension of this study until April 17, 1968 at which time the Council will then file its final report to the General Court.

Sincerely yours,

A handwritten signature in cursive ink that appears to read "Edward R. Willett".

Dr. Edward R. Willett
Chairman

ERW:ph
Enc.

Dermot P. Shea
Executive Secretary

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(The Members of the Council serve without compensation)

WHAT IS A COMMUNITY ANTENNA TELEVISION SYSTEM (CATV)?

"Generally speaking, a CATV system may be described as a facility which receives and amplifies the signals broadcast by one or more television stations and redistributes such signals by wire or cable to the homes or places of business of subscribing members of the public for a fee. The role of microwave facilities in the operation of such a system usually consists of the relay of television broadcast signals, normally picked up off-the-air at a point some distance from the transmitting broadcast antenna, through a series of one or more radio repeaters to a terminal point in or near the community served by the CATV, from which terminal point the signals are distributed by cable to the individual subscribers. In using microwave service, a CATV operator reaches out to obtain signals that cannot be received by means of an off-the-air antenna installation, or to obtain better reception of signals that can only be received marginally off-the-air." This definition is taken from the Federal Communications Commission, "FIRST REPORT AND ORDER, in re Docket No. 14895 and Docket No. 15233."

The heart of a CATV system is the network which connects the antennas and head-end equipment of the CATV operator with the homes of his subscribers. This network which is made up of coaxial cables, provides in effect a private radio and T.V. spectrum which can be employed to relay signals entering the system at any point for a vast number of purposes.

In the words of Business Week of September 16, 1967 it "could be a communications system of limitless potential" which "will include both free and pay TV, two-way telephone TV, electronic grocery shopping, automatic reading of water and electric meters, fire and burglar alarms, and political broadcasts beamed to specific neighborhoods." Not only are all of these auxiliary services technically feasible over the cable today, but it requires little imagination to conjure up additional uses such as data transmission for health and financial purposes, radio transmission of photographs and the printed word making possible delivery of newspapers over the network, and services connected with civil defense and public health and safety. All of these communications miracles most certainly will be available in the future once the network of coaxial cables connecting up the homes of any given community is put in place. Much of the testimony taken by the Consumers' Council in its public study session of January 4, 1968 at the State House points up the possibilities and problems of CATV in detail (see Appendix A transcript of testimony taken at the public study session).

GROWTH OF THE CATV INDUSTRY

NATIONAL

Year	Operating Systems*	Number of Subscribers (thousands)
1952	70	14
1953	150	30
1954	300	65
1955	400	150
1956	450	300
1957	500	350
1958	525	450
1959	560	550
1960	640	650
1961	700	725
1962	800	850
1963	1,000	950
1964	1,200	1,085
1965	1,325	1,275
1966	1,570	1,575
<u>1967</u>	<u>1,770</u>	<u>2,100</u>

*As of January 1. Source: 1967 TV Factbook

Ownership of CATV systems breaks down as follows:

1. Approximately 15 per cent of the operating systems are owned by newspaper and magazine publishers.
2. At least 33 per cent of the systems are controlled by TV or radio broadcasting interests.
3. About 25 per cent are controlled by independent telephone systems - e.g., General Telephone and Electronics, Inc. -- or are on lease from the Bell Telephone System.

SOURCE: ANPA Research Institute, Inc., Bulletin 933, September 29, 1967

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There are 28 municipalities now being served by community antenna systems in Massachusetts. Twenty-one municipalities have issued permits where systems have not yet started construction. Three municipalities have systems that are currently under construction. (see appendix A) (Page 153 of transcript) - Many Cities and Towns have informed the Council that they have several applications from different companies pending before them. The Council has no accurate statistical information in this area. It is believed, however, that the number of applications pending throughout the Commonwealth is quite large.

COMMENTS ON FEDERAL JURISDICTION OVER CATV

Although CATV systems have been operating in the United States since the early 1950's and although the Federal Communications Act contains sweeping provisions giving the Federal Communications Commission plenary jurisdiction over the broadcast and distribution of radio and television signals, the Commission until two years ago declined to exercise any jurisdiction over community antenna television. In early 1966, however, the Commission changed its views and for the first time asserted authority over such systems. On March 8, 1966 it issued its Second Report and Order announcing the new regulations which it would apply in this field. As Appendix B there is attached hereto a copy of a Public Notice of the Federal Communications Commission dated March 8, 1966 summarizing those regulations. The regulations there described are those that are effective today.

The Executive Secretary of the Council has been in correspondence with the Federal Communications Commission and there is attached as Appendix B a letter dated October 26, 1967 from Rosel H. Hyde, Chairman of the Commission, in reply to a question as to the position of the Commission on the selection and authorization of CATV operators. The regulations themselves make it clear, and the letter of Chairman Hyde confirms, that questions of "initial franchising or other authorizations of systems, and the terms of franchising are left to local law and municipal bodies." In still other pronouncements, the Commission has made it clear that it did not intend to regulate CATV rates or the extent and quality of CATV service.

The issuance of these regulations has, however, resulted in a number of court proceedings and in two cases the United States Supreme

Court has already granted certiorari. There are also a number of bills pending before the Congress to legislate in the field of CATV which range from proposals for no federal regulation to complete federal preemption. Examination of the Commission's Second Report and of the Public Notice will disclose that among those proposing legislation is the Commission itself, which among other things has asked to have clarified the exact scope of federal preemption in the regulation of CATV systems.

ROLE OF THE TELEPHONE COMPANY

The problem of initial authorization is complicated by a role which may be played in this field by the telephone company. The New England Telephone Company which is the carrier serving Massachusetts has filed with the FCC a tariff effective January 31, 1968 offering to lease to CATV operators all lines and auxiliary equipment except headend equipment necessary to operate a CATV system. From the information the Council has received, it appears likely that the tariff will be allowed to become effective subject to the determinations reached in pending FCC proceedings involving (1) whether an FCC certificate of public convenience is a necessary prerequisite to construction of such a system by a telephone company; and (2) the reasonableness of the rates and practices specified in such tariffs generally. Until the FCC reaches conclusions on these latter matters, there appears to be no present obstacle to New England Telephone Company to undertake construction and lease of CATV systems. Unless legal and effective methods of state control of such installations can be devised, a ready means of bypassing at least the initial authorization aspect of

Commonwealth regulation may be open. The staff of the Council intends to study carefully all alternatives.

Conclusion

These above facts begin to make it obvious that it is impossible for anyone at this time to define with assurance either the present or future exact limits of federal and state regulatory power over CATV. On the other hand, the Council has concluded that the best interests of the Commonwealth will not be served by an indefinite delay in asserting the concern of the Commonwealth with the authorization and operation of CATV systems. Despite a complete awareness that either the United States Supreme Court or the Congress of the United States, or both, may possibly take further action limiting any regulatory scheme over CATV that may be set up by the Commonwealth, the Council has decided to proceed on the assumption that the self-limitation on its jurisdiction proclaimed by the Federal Communications Commission is valid, that it will ultimately be sustained and will become permanent. It recommends to the General Court that it do the same.

Employing this approach, the Council is preparing to recommend to the General Court specific legislation dealing with authorization of CATV systems and recommendations concerning regulation of such systems in the areas of rate charges, technical standards and local originations especially of political campaign material. These are all facets of the regulatory problem as to which the FCC has disclaimed jurisdiction and which the Council believes should be considered in the public interest.

Dermot P. Shea
Executive Secretary
(Member-Federal & Supreme
Court Bars)

COMMENT ON STATE AND LOCAL JURISDICTION OVER CATV

In connection with CATV study, pursuant to the resolve of the General Court, the Consumers' Council, while primarily interested in policy issues, necessarily becomes involved with questions of law. There is nothing in the Massachusetts General Laws specifically giving jurisdiction over CATV to any state agency. The question has been raised concerning local jurisdiction. In this regard, it has encountered several legal issues that require clarification. The Council, therefore, has asked the Attorney General for an opinion regarding certain legal issues in order to be guided by that opinion in formulating some of its recommendations to the General Court.

While the so-called franchises or permits heretofore granted by local cities and towns to CATV companies vary considerably in many respects, it has become apparent that the only statutory legal authority being cited by cities and towns in awarding the franchises or permits is General Laws, Chapter 166 Sections 21 and 25. Using those sections as authority, the municipalities have been in many instances awarding franchises reserving to themselves a percentage of the annual gross receipts, charging license fees, etc. In addition, some municipalities have included restrictions on the rates to be charged for the services. The Council is concerned about the existing powers of cities and towns to award permits under the conditions which have been included in many the so-called franchises or contracts. In making its determination and recommendations the Council believes it necessary to clarify the existing powers of cities and towns in regard

to such franchises. Once the legal issues have been clarified, the Council will be in a better position to make further recommendations in this area.

Asst. Atty. Gen. Robert L. Meade

COMMENTS FROM THE CITIES AND TOWNS ON CATV

In order to obtain the views of the 351 Cities and Towns of the Commonwealth a survey form was sent by the Council to all the Mayors and Boards of Selectmen on October 17, 1967. One hundred nineteen municipalities responded to the Council's survey (see appendix C). The comments made in the returns indicate that many Cities and Towns want legislative guide lines in order to handle the licensing of CATV systems. Some municipalities believe that they already have the authority under the General Laws - Chapter 166, Section 21 and Section 25 pertaining to location of poles, etc. The following is a sampling of comments made by some of the cities and towns. Some already have CATV. (see appendix A - Page 153 Transcript)

West Newbury: "It is felt that the Town could benefit by the cable T.V., but complete protection and freedom of selection must be guaranteed to all users, and non-users alike. Also, the cost or rate should be as reasonable as possible, state regulations in this area would be considered most satisfactory."

West Bridgewater: "We believe that if it is desirable to have such systems installed, it should be a joint control by the state and local municipal governments, similar to a public utility."

Amherst: "Believe that there should be joint control of cablevision in much the same manner as the telephone and electric utilities are regulated within the state. I believe that the Public Utility Commission should be able to exercise rate-making authority over local cablevision companies since there is bound to be a gradual consolidation of independent companies as has taken place in other utility fields."

Arlington: "The Selectman at this writing are of the opinion that this cablevision service should be under the jurisdiction of local municipal government."

Norwell: "The Board has no objection to such a service provided it is under State jurisdiction and properly supervised."

New Bedford: "I feel that the regulation of so-called cable service should be essentially a local matter under the control of local people in accordance with the Home Rule Amendment of 1966. At present our City Council is carefully studying a number of applications and will, I assume, choose that one which will offer most by way of service and revenue to the people of our city."

Hanson: "It appears that this could become a monopoly as the first company to apply to the existing Public Service Companies for use of their poles etc. would eliminate any other venture. This could be good or bad for our people, therefore, we intend to explore rights as far as possible before any action is taken."

Shrewsbury: "Although we do not have a centrally located antennae service, we are of the opinion, expressed by James E. Baker, Manager of the Town of Shrewsbury Municipal Light Department, that control of the location and maintenance of television service by cable should be exercised by local authorities."

Oxford: "Oxford has none. If the time comes when we do want it, we would be vitally interested in any legislation which would allow cable television within our community and would definitely want the right or franchise to regulate this within our community and state."

Marblehead: "We believe that control of this service, which would be lines and consumer particular wires only, should be under control of local authorities. As we have a Municipal Light Department and poles are jointly owned by the Department and New England Telephone, fees or franchise or pole rental must accrue to the town. We believe any contract should provide that any household, no matter how remote, in the town, should be provided service if requested, and any contract or franchise should so provide."

Huntington: "Our Board feels that the state should have jurisdiction over this antennae service."

Stoneham: "We have been approached by a number of corporations, but we have not issued a license to any of them as of this moment."

Franklin: "We have met with two companies relative to cablevision but have not signed any agreements and do not plan to do so until such time as we have more information. We are very interested in the results of your study."

Southampton: "In our opinion we would favor "Local Municipal Government". There may however be areas in this program which would require state attention, but as far as the actual program itself is concerned, we think the local officials should handle the matter in their respective areas."

Weston: "We believe this is an important area for some basic legislation to define the rights, duties and responsibilities of the town, its officers and those of the CATV firms. One area in particular stands out as a major "hot potato" for any local official: namely, the offer of all firms to provide service to local governments for transmission of public meetings and events. We believe the problems of control here are substantial. Questions of "equal time" for proponents and opponents of local issues are raised. The entire gamut of regulatory problems facing the Federal Communications Commission could well be raised in the municipalities of the Commonwealth."

Chelmsford: "At this time the Selectmen feel that they cannot offer any recommendations or comments on the subject as they are not presently familiar with all aspects of the service, inasmuch as the proposals are now being studied."

Chicopee: "I feel that licensing should be handled through the local government but that state regulations should be formulated to provide continuity, control and supervision as is presently carried out through the Department of Public Utilities."

Adams: "You will note that it is our sentiment locally that "antennae service" ought to be subject to "joint state and local control" in the interest of the public. It is the feeling of our board that the state could well recommend legislation in this matter in order to have some uniformity of rules and regulations dealing with the existence of the telecable concerns."

Worcester: "We find no grant of authority from the General Court which empowers the City of Worcester to grant to or to contract with any person or corporation for exclusive rights (a franchise) to provide community antenna T.V. services in the city of Worcester (prefer control under state jurisdiction.)"

Scituate: "We would be interested in far more information along the lines as suggested by your questions. While we recognize that a company could not afford to make the investment for this type of installation without rather long term guarantees, it seems implicit that the public must have greater protection than was in evidence before us in the proposed lease contract arrangement or in the information

which was presented to us. In fact, this operation comes very close to being similar to a public utility."

FROM THE TRANSCRIPT OF THE STUDY SESSION ON JANUARY 4, 1968
(See Appendix A)

Stoneham: Chairman of the Board of Selectmen
(Page 234 transcript)

"Now, how could any public official in good conscience enter into a contract that may run 45 years and repeal the By-laws of an entire community. This is why I appear here before you today. I feel a tremendous burden of responsibility on the Consumers' Council. I hope you would know that I want some guidelines, some criteria. I suspect there are other public officials that are in the same position. We would like to make a contract, but we need help. I would hope that you would consider making some very strong recommendations either through the Department of Public Utilities or the Legislature as to guidelines for local officials."

Webster: Mr. Joseph Gorski, Town Counsel
(Page 268 transcript)

"Now, the present situation as far as grants of a similar nature, I would call them the same; because it is a public service, and so it is a public utility, a public service. For public utilities, the statute has served us perfectly as it possibly can in the combined local interests in the cases of actual physical grants of pole rights as they have in the necessity for these particular pole rights to power companies in that particular area served, with the regulatory sections of the statute which provides minimal requirements for hearings to see that all parties of interest have an actual right to be heard and to give their views relative to the situation. Perhaps it might be that 166 doesn't cover the situation totally, but I feel quite certain that it could be used as a base for the beginning of a proper statutory enactment which would combine the local interest and the autonomy of a local situation with the supervision of the Department of Public Utilities, which basically has been handling this type of situation for 50 years."

"Forty Cities and Towns represented by the Massachusetts Municipal Electric Association have taken the position that the local authorities should grant the franchise. However, as far as regulation is concerned, the feeling is that regulation should be at a State level."
(see appendix A) Transcript 269-270

THE COUNCIL'S PUBLIC STUDY SESSION

On December 7, 1967 the Consumers' Council announced that it would hold a public study session on January 4, 1968 on the question of public regulation of CATV. A notice of this study session was sent to all Members of the General Court and all Mayors and Boards of Selectmen. A public announcement was also made, inviting all interested parties to present their positions at this study session. In addition, the Executive Secretary sent notices to all persons known to have an interest in this matter. A further public announcement was made on December 28, 1967 stating as follows: "The Council is specifically considering the following questions in connection with its Cable T.V. Study Session on January 4, 1968.

- A. What governmental unit (state or local) should grant a license or franchise?
- B. What criteria should be considered in granting a license or franchise?
- C. What should be required to be contained in each such license or franchise?
- D. Should rates be regulated?"

The public study was held on January 4, 1968 in Room 436, State House (see Appendix A). The study session was held from 10:00 A.M. to 6:50 P.M. in order to give all parties an opportunity to present their views. The seventeen witnesses that were heard well represented a cross section of the viewpoints on this subject. Much worthwhile testimony was taken at this proceedings. The CATV INDUSTRY was represented along with Members of the General Court as well as officials from Cities and Towns. The Council feels that every opportunity has

been given to interested parties to record their viewpoint and assist the Council in its study. In addition to this public study session, the Council has been contacted by interested groups over a period of time.

RECOMMENDATIONS OF THE CONSUMERS' COUNCIL

1. The Council voted to file an interim report instead of a final report at this time. The Council further voted to request the General Court for an extension of this study (Resolve 1967 - Chapter 75) until April 17, 1968 at which time the Council will then file its final report. This extension has been requested for the following reasons.
 - a. Certain legal questions have been submitted to the Attorney General for his opinion.
 - b. It has not been possible for the Council to draft its legislative recommendations at this time because of the complexity of this problem. It is felt that the time requested for extension will enable the Council to complete its study in fairness to all parties of interest.
2. The Council strongly recommends that there be a moratorium on the granting or implementation of CATV franchises or permits by the Cities and Towns of the Commonwealth until the Council's final report has been submitted or the General Court has acted. This recommendation is made because of the confusion close to chaos that now exists in many communities due to the lack of appropriate legal safeguards. Legislative guide lines must be drawn to protect the public interest.
3. The Council further recommends that there should be governmental regulation of CATV by joint arrangement between the state and municipalities with primary responsibility for the granting of any franchise resting with the Cities and Towns of the Commonwealth.
4. The Council requests that the General Court appropriate funds to print this interim report because of the widespread public interest in this matter. (No funds were appropriated for this study and the Council does not have sufficient funds in its own budget for this purpose.)



